

Notice of Allowability

Application No.

10/808,156

Examiner

Jeffrey L. Gellner

Applicant(s)

SMITH ET AL.

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the after final amendment received 25 July 2005.
2. ☒ The allowed claim(s) is/are 4-9 and 21.
3. ☒ The drawings filed on 24 March 2004 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a) (d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCIT Rule 17.2(a)).

* Certified copies not received: _____

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

DETAILED ACTION

EXAMINER'S AMENDMENT

The application has been amended as follows:

In claim 4, line 2, after "treating" has been added --a--.

In claim 4, line 13, "though" has been changed to --through--.

In claim 4, line 16, "though" has been changed to --through--.

The following is an examiner's statement of reasons for allowance:

The prior art did not disclose or suggest a method of treating a tree exhibiting a decline in health, the tree having an established root system in the earth, the method comprising the steps of creating in a container a mixture comprising a fertilizer and a growth hormone; applying the previous created mixture from the container directly underground to the soil in the root system of the tree to treat the root system of the tree; wherein the growth hormone is selected from the group consisting of naphthalene acetic acid and 3-indolebutyric acid. wherein the step of applying the mixture comprises the step of applying the mixture directly underground through holes drilled at points around the periphery of the canopy, in combination with the step of applying the mixture comprises the step of applying the mixture directly underground through holes drilled at points around the periphery of the tree canopy spaced apart by substantially 18 inches.

Also, the prior art did not disclose or suggest a method of treating a distressed tree planted in the earth, the distressed tree exhibiting a decline in health, the tree having an established root system in the earth, the method comprising the steps of creating a hole in the soil

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in a root area of a tree; and applying directly underground a previously prepared mixture comprising a fertilizer and a root growth hormone in the hole created in a subterranean root area of the tree; wherein the root growth hormone is selected from the group consisting of naphthalene acetic acid and 3-indolebutyric acid, in combination with the steps of watering the distressed tree to saturate the soil to a depth of 8 to 10 inches, allowing the soil in the root system of the distressed tree to dry out over time so as to prevent bacteria and fungi from attacking the root, and rewatering the distressed tree to saturate the soil to a depth of 8 to 10 inches.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

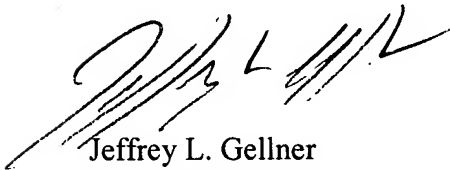
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey L. Gellner whose telephone number is 571.272.6887. The examiner can normally be reached on Monday-Friday, 8:30-4:00, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on 571.272.6891. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'J. L. Gellner', with a stylized flourish at the end.

Jeffrey L. Gellner
Primary Examiner
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